

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC 20591

In the matter of the petition of

FRANKLIN PETER TOUPS

for an exemption from §§ 61.65(a)(1)
and 61.153(d)(1) of Title 14,
Code of Federal Regulations

Regulatory Docket No. FAA-2002-11712

DENIAL OF EXEMPTION

By letter dated February 7, 2002, Mr. Robert B. Schultz, Attorney at Law, 9710 West 82d Avenue, Arvada, Colorado 80005, petitioned the Federal Aviation Administration (FAA) on behalf of Mr. Franklin Peter Toups for an exemption from §§ 61.65(a)(1) and 61.153(d)(1) of Title 14, Code of Federal Regulations (14 CFR). The proposed exemption, if granted, would allow Mr. Toups, whose airman certificate (No. 439880504) was revoked on September 28, 1990, to take a single checkride to obtain his airline transport pilot (ATP) certificate and instrument rating without first retaking the private and commercial pilot practical tests.

The petitioner requests relief from the following regulations:

Section 61.65(a)(1) prescribes that a person who applies for an instrument rating must hold at least a current private pilot certificate with an airplane, helicopter, or powered-lift rating appropriate to the instrument rating sought.

Section 61.153(d)(1) prescribes, in pertinent part, that to be eligible for an ATP certificate, a person must hold at least a commercial pilot certificate and an instrument rating.

The petitioner supports its request with the following information:

The petitioner states that, on September 28, 1990, the FAA issued an emergency revocation of Mr. Toups' ATP and flight instructor certificates for attempting to act as

pilot in command while under the influence of alcohol, based on violation of § 91.17(a)(1), (2), and (4). The petitioner indicates that Mr. Toups wishes to reinstate his ATP certificate and instrument rating, without first retaking the private and commercial pilot practical tests.

The petitioner states that a grant of exemption is in the public interest because it would relieve Mr. Toups, and all other persons in similar circumstances, from the unnecessary and probably unintended burden of requiring a person attempting to reapply for his or her ATP certificate and instrument rating to retake the private and commercial pilot practical tests, in which he or she will be held to a much lower standard. The petitioner states that it makes no sense to require an applicant for an ATP certificate to take the private and commercial pilot practical tests if he or she already has the required aeronautical experience, has recently obtained flight instruction, and has been recommended by a certified flight instructor for the ATP certificate and instrument rating checkrides.

The petitioner states that a grant of exemption will not adversely affect safety because Mr. Toups will be required to meet the same standards required of every ATP and instrument-rated pilot.

The petitioner notes that the FAA has recognized its duty to help rehabilitate pilots in its policy statement issued on October 29, 1991 (56 FR 55788). The petitioner further notes that, in that statement, the FAA implemented a policy of expunging enforcement records after 5 years to improve employment opportunities for pilots. The petitioner acknowledges that this policy does not apply to revocations but states that it is evidence of the FAA's policy of removing unnecessary burdens to pilot certification.

A summary of the petition was published in the Federal Register on April 23, 2002 (67 FR 19795). No comments were received.

The FAA's analysis/summary is as follows:

We have considered the petitioner's supporting information and find that a grant of exemption would not be appropriate and could adversely affect safety.

Mr. Toups' ATP certificate and instrument ratings were revoked because of confirmed violations of § 91.17(a)(1), (2), and (4). On the basis of the information presented by the petitioner, an equivalent level of safety would not be maintained if the exemption were granted.

The regulatory requirement that pilots earn certificates and ratings within a "building block" approach to flight training is a proven method for ensuring that pilots are adequately trained and qualified before a pilot certificate and aircraft rating are issued. Nothing in Mr. Toups' petition warrants that we change our proven process of pilot training and certification.

We recognize Mr. Toups' aeronautical experience; therefore, we note that Mr. Toups would probably not need to repeat all of the aeronautical experience and training necessary to reapply for his private, commercial, and ATP certificates and the associated instrument and aircraft ratings. The amount of training Mr. Toups would need depends on his existing skills and proficiency as evaluated by the authorized instructor who would recommend Mr. Toups for the pilot certificates and ratings for which he applies. Mr. Toups must comply with the prerequisite requirements in §61.39(a), which include holding a third class medical certificate, to be eligible for the practical tests for certificates and ratings under part 61.

The petitioner states that our 1991 enforcement policy statement implementing a policy of expunging enforcement records after 5 years, while not applying to revocations, indicates our policy of removing unnecessary burdens to pilots. Although that might be our policy for other types of enforcement actions, it clearly does not apply to revocations. In that same policy statement, we state that "records of enforcement actions resulting in revocation of the airman certificate will be maintained indefinitely." Therefore, we are not removing burdens placed on pilots who have had their certificates revoked.

We find that the petitioner has failed to show that a grant of exemption would be in the public interest or that Mr. Toups' situation is unique compared to other pilots in similar circumstances subject to the same regulations.

Please note that in an effort to allow the public to participate in tracking our rulemaking activities, we have transitioned to the Department of Transportation's Internet-accessible Docket Management System (DMS), located at <http://dms.dot.gov>. This new docket system enables interested persons to submit requests to, view requests on, and download requests from the DMS in accordance with 14 CFR § 11.63. You should submit future requests through the DMS.

In consideration of the foregoing, I find that a grant of exemption would not be in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701 delegated to me by the Administrator, the petition of Mr. Franklin Peter Toups for an exemption from 14 CFR §§ 61.65(a)(1) and 61.153(d)(1) is hereby denied.

Issued in Washington, DC, on January 13, 2003

/s/

James J. Ballough
Director, Flight Standards Service